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3Dlabs Inc., Ltd.*

20 FUZZYSHARP TECHNOLOGIES) Case No.: 07-CV-5948-SBA
21 INCORPORATED,)
22 Plaintiff,) **JOINT CASE MANAGEMENT**
23 vs.) **CONFERENCE STATEMENT**
24 3DLABS INC., LTD.,)
25 Defendant.) Date: July 30, 2008
) Time: 3:15 p.m.
) Courtroom: Telephone
) The Honorable Saundra Brown Armstrong

1)
2 3DLABS INC., LTD., a Bermuda Corporation,)
3)
4 Counterclaimant,)
5)
6 vs.)
7 FUZZYSHARP TECHNOLOGIES)
8 INCORPORATED, a Nevada Corporation,)
9)
10 Counter defendant.)
11)
12)
13)

14 Plaintiff and Counter defendant FuzzySharp Technologies Incorporated (“FST”) and
15 Defendant and Counterclaimant 3Dlabs Inc., Ltd. (“3Dlabs”) hereby submit the following Joint
16 Case Management Conference Statement pursuant to Local Rule 16-9 and the Standing Order for
17 All Judges of the Northern District of California – Contents of Joint Case Management Statement.
18

19 **1. Jurisdiction**

20 The Court has subject matter jurisdiction over FST’s claims for patent infringement
21 pursuant to Title 28 United States Code sections 1331 and 1338(a). The Court has subject matter
22 jurisdiction over 3Dlabs’s declaratory judgment counterclaims of non-infringement and invalidity
23 pursuant Title 28 United States Code sections 1331, 1338(a), 2201, and 2202. The parties do not
24 dispute personal jurisdiction and venue in this district. No parties remain to be served.

25 **2. Facts**

26 FST filed the Complaint in this case against 3Dlabs on November 26, 2007, alleging that
27 3Dlabs infringed both U.S. Patent No. 6,172,679, and U.S. Patent No. 6,618,047. The Complaint
seeks damages, interest and costs, and such other relief as the Court deems proper.

3Dlabs filed its Answer on April 25, 2008. 3Dlabs denies that it infringes the patents in
suit, contends that the patents in suit are invalid and/or unenforceable pursuant to Title 35 United
States Code sections 102, 103, 112, and/or 116. 3Dlabs also filed a Counterclaim seeking a
declaratory judgment that each of the patents in suit are not infringed by 3Dlabs and are invalid
and/or unenforceable against 3Dlabs pursuant to 35 United States Code sections 102, 103, 112,

1 and/or 116. Both parties contend that this is an exceptional case under Title 35 United States
2 Code section 285 and seek attorneys' fees and costs, and such further relief as the Court deems
3 proper. FST has filed its Answer to the Counterclaim denying that 3Dlabs is entitled to the relief
4 for which it prays.

5 **3. Legal Issues**

6 The following legal issues are in dispute:

- 7 • The proper construction of the relevant claims of the asserted patent;
- 8 • Whether any of the accused 3Dlabs products infringe any of the asserted claims;
- 9 • Whether the asserted claims are invalid and/or unenforceable against 3Dlabs pursuant
10 to Title 35 United States Code sections 102, 103, 112, and/or 116;
- 11 • Whether FST is entitled to any damages, and if so, the amount of such damages;
- 12 • Whether this case is an exceptional case within the meaning of Title 35 United States
13 Code section 285;
- 14 • Whether some or all of FST's claims against 3Dlabs are barred under Title 35 United
15 States Code section 273;
- 16 • Whether FST's claims for damages and injunctive relief are barred in whole or in part
17 by operation of Title 35 United States Code sections 286 and 287; and
- 18 • Whether FST is barred from enforcing its patents against 3Dlabs under the doctrines of
19 implied license, patent exhaustion, laches, waiver, and/or estoppel.

20 **4. Motions**

21 No motions have been filed, other than motions filed by FST relating to scheduling.

22 3Dlabs expects to file dispositive motions on the issues of infringement and/or validity, as well as
23 a summary judgment motion on the issue of damages.

24 **5. Amendment of Pleadings**

25 At this stage of the case, neither party expects to seek leave to amend their pleadings to
26 join additional parties or to add any claims or defenses.

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1 **6. Evidence Preservation**

2 The parties agree to preserve evidence relevant to the issues reasonably evident in this
3 action, including evidence in electronic form.

4 **7. Disclosures**

5 The parties anticipate exchanging initial disclosures pursuant to Rule 26(a) of the Federal
6 Rules of Civil Procedure 14 days after the Initial Case Management Conference, or on
7 August 13, 2008, whichever is later.

8 **8. Discovery**

9 There has been an informal exchange of limited information between the parties. Based on
10 the information provided by 3Dlabs, FST believes that an early resolution is likely. No formal
11 discovery has been taken to date.

12 FST proposes the following limitations on discovery:

13 Interrogatories: 25 per party

14 Document Requests: 25 per party

15 Requests for Admissions: 50 per party

16 Depositions: 5 fact witnesses per party

17 3Dlabs does not agree with any limitations on discovery beyond the limitations required by
18 the Federal Rules of Civil Procedure and/or Civil Local Rules of this District. Accordingly,
19 3Dlabs proposes the following limitations on discovery:

20 Interrogatories: 25 per party

21 Document Requests: None

22 Requests for Admissions: None

23 Depositions: 10 fact witnesses plus expert witnesses

24 A proposed schedule setting forth various case and discovery deadlines is set forth herein
25 at Paragraph 17.

26 For the purposes of convenience, the parties agree, at the time of service of all discovery,
27 to informally serve their discovery requests and responses via email and to provide one another

1 with a word processing file of any requests and responses thereto that are served. The parties do
2 not agree that service of discovery requests or responses thereto shall be made via email. Rather
3 formal service of discovery requests and responses thereto shall be by United States Postal Service
4 First Class Mail or Overnight Courier Service, as chosen by the serving party.

5 **9. Class Actions**

6 Not applicable to this case.

7 **10. Related Cases**

8 There are no open or pending related cases.

9 **11. Relief**

10 FST's Complaint seeks a judgment; damages; interest and costs; and such other relief as
11 the Court may deem proper.

12 3Dlabs's Counterclaim for declaratory judgment seeks a judgment on noninfringement and
13 invalidity and/or unenforceability of the patents in suit; costs and fees; and such other relief as the
14 Court may deem proper.

15 Should liability be established, the basis of any damages will be a reasonable royalty
16 assessed against the sales of the infringing products.

17 **12. Settlement and ADR**

18 The parties have informally discussed settlement, but have not been able to resolve the
19 matter at this time. FST believes an early settlement conference with a Judge or Magistrate Judge
20 in this District should resolve the case. 3Dlabs remains open to settlement and does not oppose
21 having a settlement conference with a Judge or Magistrate Judge of this District, but believes that
22 no such conference should occur prior to this Court issuing its ruling on claim construction of the
23 patents in suit.

24 **13. Consent to Magistrate Judge for All Purposes**

25 FST does not consent to a magistrate judge for trial and entry of judgment.

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27 //

1 **14. Other References**

2 Arbitration, whether binding or not, is not applicable to this case. Further, the parties agree
 3 that this case is not suitable for transfer to a special master, or to the Judicial Panel on Multidistrict
 4 Litigation.

5 **15. Narrowing of Issues**

6 At this time, the parties have no suggestions or proposals that may result in a narrowing of
 7 any of the issues.

8 **16. Expedited Schedule**

9 As a patent case, this action is subject to the schedule provided for in the Patent Local
 10 Rules for the Northern District of California. The parties propose the schedule set forth in
 11 Paragraph 17 for the Court's consideration.

12 **17. Scheduling**

Event	Parties' Proposal
Parties to exchange initial disclosures	August 13, 2008 or 14 days following the Initial Case Management Conference, whichever is later.
FST's Disclosure of Asserted Claims and Preliminary Infringement Contentions (Patent L.R. 3-1) and Accompanying Document Production (Patent L.R. 3-2)	August 5, 2008
3Dlabs's Preliminary Invalidity Contentions (Patent L.R. 3-3) and Accompanying Document Production (Patent L.R. 3-4)	September 19, 2008
Exchange of Proposed Terms and Claim Elements for Construction (Patent L.R. 4-1(a))	September 26, 2008
Exchange of Preliminary Claim Constructors and Extrinsic Evidence (Patent L.R. 4-2)	October 9, 2008

Event	Parties' Proposal
Joint Claim Construction Statements (Patent L.R. 4-3)	November 19, 2008
Completion of Claim Construction Discovery (Patent L.R. 4-4)	November 28, 2008
FST's Opening Claim Construction Brief (Patent L.R. 4-5(a))	January 2, 2009
3Dlabs's Opposing Claim Construction Brief (Patent L.R. 4-5(b))	January 16, 2009
FST's Reply Claim Construction Brief (Patent L.R. 4-5(c))	January 23, 2009
Claim Construction Hearing (Patent L.R. 4-6)	February 6, 2009*
Further CMC after Claim Construction Ruling is issued	To be determined after claim construction ruling*
FST's Final Infringement Contentions (Patent L.R. 3-6(a))	March 9, 2009 or 30 days after claim construction ruling, whichever is later
3Dlabs's Final Invalidity Contentions (Patent L.R. 3-6(b)) and production of Willfulness Opinions (Patent L.R. 3-8)	March 30, 2009 or 50 days after claim construction ruling, whichever is later
Fact Discovery Cut-off	180 days after claim construction ruling
Opening Expert Reports on issues for which a party has the burden of proof	30 days after fact discovery cut-off

Event	Parties' Proposal
Rebuttal Expert Reports	30 days after exchange of opening expert reports
Expert Discovery Cut-off	30 days after exchange of rebuttal expert reports
Last day to file Dispositive Motions	December 8, 2009*
Last day for hearing Dispositive Motions	(not later than 120 days before trial)
Final Pretrial Conference	April 19, 2010*
Trial	May 17, 2010*

* Subject to the Court's availability

18. Trial

Both parties have demanded a jury trial. Thus, all issues in the case that can be tried to a jury will be tried to a jury. The parties anticipate a jury trial of this action to last 10 court days.

19. Disclosure of Non-Party Interested Entities or Persons

Both parties have filed a Certification of Interested Entities or Persons pursuant to Local Rule 3-16.

FST, pursuant to Civil Local Rule 3-16, certified that FuzzySharp Technologies, Incorporated has no parent corporation and that no publicly held corporation owns more than ten percent of the stock of FuzzySharp Technologies, Incorporated. FST further certified that there are no persons, associations of persons, firms, partnerships, corporations, or other entities that:

- (1) have a financial interest in the subject matter in controversy, or in a party of the proceeding; or

1 (2) have a non-financial interest in the subject or in a party, that could substantially [be] affected
2 by the outcome of this proceeding. Document 17 of the Court Docket.

3 3Dlabs, pursuant to Civil Local Rule 3-16, certified that the following listed persons,
4 associations of persons, firms, partnerships, corporations (including parent corporations) or other
5 entities (i) have a financial interest in the subject matter in controversy or in a party to the
6 proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be
7 substantially affected by the outcome of this proceeding:

8 Creative Technology Ltd., a Singapore corporation, is the parent corporation of
9 Defendant and Counterclaimant 3Dlabs Inc., Ltd. 3Dlabs Inc., Ltd. is a wholly owned
10 subsidiary of Creative Technology Ltd.

11 Documents 14 and 15 of the Court Docket.

12 **20. Additional Items**

13 The parties have met and conferred pursuant to Rule 26(f) of the Federal Rules of Civil
14 Procedure.

15 Pursuant to Rules 26(f)(1) and (2) of the Federal Rules of Civil Procedure, regarding the
16 timing of initial disclosures and discovery, the parties propose to adopt the schedule set forth
17 hereinabove at Paragraph 17, and the limitations, if any, that are set forth in Paragraph 8 and
18 adopted by the Court. The parties do not anticipate any phasing of discovery.

19 Pursuant to Rule 26(f)(3) of the Federal Rules of Civil Procedure, the parties agree to
20 produce materials electronically on CD or DVD where feasible.

21 Pursuant to Rules 26(f)(4) and (6) of the Federal Rules of Civil Procedure, the parties
22 have agreed upon a Stipulated Protective Order and have submitted it to the Court for signature.
23 Document 9 of the Court Docket. The Stipulated Protective Order executed by counsel and filed
24 with the Court includes a provision addressing inadvertently produced privileged materials.

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1 Pursuant to Rule 26(f)(5) of the Federal Rules of Civil Procedure, the parties have
2 proposed separate discovery limitations set forth in Paragraph 8 that require the Court resolve at
3 or following the Initial Case Management Conference.

4 Respectfully submitted,
5
FINK & JOHNSON
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7 Dated this 21st day of July, 2008.

By: /s/ David Fink
David Fink

8
9 *Attorneys for Plaintiff and Counter defendant*
FuzzySharp Technologies, Incorporated
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11 LAW OFFICES OF MARK L. PETTINARI
12

13 Dated this 21st day of July, 2008.

By: /s/ Mark L. Pettinari
Mark L. Pettinari

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15 *Attorneys for Defendant and Counterclaimant*
3Dlabs Inc., Ltd.
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17 **ATTESTATION PURSUANT TO GENERAL ORDER 45**

18 I, David Fink, attest that concurrence in the filing of this document has been obtained
19 from each of the other signatories. I declare under penalty of perjury under the laws of the
20 United States of America that the foregoing is true and correct. Executed on July 21, 2008 at
21 Houston, Texas.

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23 By: /s/ David Fink
David Fink
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